



## II. DISCUSSION

Pursuant to Fed. R. Crim. P. 32.2(c)(1)(A), “[i]n the ancillary proceeding, the court may, on motion, dismiss the petition for lack of standing, for failure to state a claim, or for any other lawful reason.” Under 21 U.S.C. § 853(n)(3), a petition “shall be signed by the petitioner under penalty of perjury [ . . .].” As noted above, Ervin did not sign his Petition under penalty of perjury. (*See* Doc. No. 27).

Courts strictly construe the requirement for a signature under penalty of perjury as an important stopgap to minimize the danger of false claims. *See United States v. Molina-Sanchez*, 2013 WL 4083271, at \*2 (W.D.N.C. Aug. 13, 2013) (“[T]he notice served on petitioner expressly stated that any petition must be filed under penalty of perjury, as required by the statute . . . Nothing in the record shows any reason for noncompliance. On this basis, therefore, the Petition should be dismissed.”); *United States v. Sanders*, 2019 WL 4199805, at \*1 (W.D.N.C. Sept. 4, 2019) (dismissing pro se petition for failure to comply with the penalty of perjury requirement). Accordingly, the Court will strictly construe the penalty of perjury requirement and grant the Motion.

## III. ORDER

**IT IS THEREFORE ORDERED** that the Government's Motion to Dismiss the Third-Party Petition to Firearm (Doc. 39) is **GRANTED**, and the Petition, (Doc. No. 27). is **HEREBY DISMISSED**.

**SO ORDERED**

Signed: April 4, 2022



Kenneth D. Bell  
United States District Judge

